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Office-Supreme Court, U.S.
FILED
MAY 24 1985
ALEXANDER L. STEVAS,
CLERK

No. 84-1404

In the Supreme Court of the United States

OCTOBER TERM, 1984

DONALD R. HUENE, ET UX., PETITIONERS

v.

UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioners contend that they cannot be required to comply with an IRS summons directing them to appear for an IRS examination unless they are allowed to videotape the proceedings.

1. On November 5, 1982, the IRS issued a summons to petitioners directing them to appear and testify about their 1980 taxable year and to bring with them certain records. Pet. App. A1, A4; see 26 U.S.C. 7602. Before issuing the summons, the IRS District Director had denied petitioners' request to videotape the conference. He did so because, in his opinion, use of video equipment would disrupt the examination (Pet. App. A4, A5). The District Director agreed to let petitioners make a verbatim stenographic record of the proceedings at their expense (*ibid.*).

On November 23, 1982, petitioners appeared at the place designated in the summons. They were accompanied by an attorney and a person carrying video recording equipment.

The examining agent refused to conduct the examination so long as petitioners had video equipment with them. Petitioners asserted a right to videotape the conference and refused to proceed on any other basis. No examination occurred. Pet. App. A2, A5.

The government then brought this action in the United States District Court for the Eastern District of California, seeking an order requiring petitioners to comply with the summons without videotaping the examination. The district court ordered the summons enforced (Pet. App. A4-A10), and the court of appeals affirmed in a per curiam opinion (*id.* at A1-A3). Petitioners' sole contention on appeal was that they had a right to videotape the IRS examination. The court of appeals rejected this argument, noting that they "were offered other means of recording the audit which were fully adequate to memorialize the proceedings" and that denial of their videotape request did not violate any of their statutory or constitutional rights (*id.* at A2).

2. Petitioners assert (Pet. 7-15) that they have a right to elect a reasonable means of recording the IRS examination, that use of a video recorder constitutes a reasonable means, and that the IRS was thus unjustified in denying their request. But as the court of appeals correctly noted (Pet. App. A2), "The question is not whether the Service might reasonably elect to permit the use of video recorders; [the question] is whether it violates any right of taxpayers for the Service not to permit such use." Petitioners point to no such right, be it statutory, regulatory, or constitutional, in their possession.

Courts have the discretion to regulate the decorum of proceedings before them. That discretion is embodied in Fed. R. Crim. P. 53, which bans photography and radio broadcasting from the courtroom. Similarly, the courts have consistently denied the existence of any right to

demand video coverage of judicial or administrative hearings. See, *e.g.*, *United States* v. *Hastings*, 695 F.2d 1278, 1280, 1283 (11th Cir.), cert. denied, 461 U.S. 931 (1983) ("just because television coverage is not constitutionally prohibited does not mean that television coverage is constitutionally mandated").

The IRS, moreover, has a published policy about the permissible methods of recording an IRS examination or conference. See [2 Audit] Internal Revenue Manual (CCH), ch. 4200, § 4245 (Nov. 2, 1981). Under that policy, as noted below (Pet. App. A2, A14), "taxpayers may ordinarily make audiotape, stenographic or other verbatim recordings of audits." It is undisputed that the IRS "was willing to permit taxpayers to use" other means of recording the examination here, and it cannot seriously be denied that those other methods "were fully adequate to memorialize the proceedings" (*id.* at A2). "Since there [was] no basic unfairness to [the] taxpayers" in denying their videotape request, their rights were not violated and the summons was properly enforced (*ibid.*).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

REX E. LEE
Solicitor General

MAY 1985

DOJ-1985-05